

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2221 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
UKABHAI BHURABHAI HEIR AND L.ROF DECEASED BHURABHAI J KOLI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR YS LAKHANI for Petitioner  
MR T.H.SOMPURA ASSTT. GOVERNMENT PLEADER  
for Respondents Nos. 1 & 2  
MR JR NANAVATI for Respondent No. 3

-----  
CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 22/07/97

ORAL JUDGEMENT

Heard Mr.Lakhani for the petitioner, Mr.Sompura, AGP for the respondents nos. 1 and 2 and Mr. J.R.Nanavati for the respondent no.3. Rule had been issued in this matter on 18-3-1997 by another learned Single Judge making it returnable on 1st April, 1997. Status quo was also directed to be maintained by all the parties till

further orders.

2. The petitioner is the son of the original land owner of a parcel of land situated in Rajkot Taluka which his father sold to the respondent no.3 sometime in the year 1975. It appears that the respondent no.3 purchased some other parcel of land situated in Wankaner Taluka of the same District in the year 1982. It is seen from the record that thereafter a grievance was made that the respondent no. 3 was not an agriculturist and the purchase effected by the respondent no.3 in the year 1991 was interfered with. It appears that a revision filed against that order is pending before the appropriate authority.

3. Having come to know that the respondent no.3 was held to be non-agriculturist in the year 1991, a suo motu proceeding was initiated by the Collector to cancel this sale effected in the year 1975. After hearing of the same, the Collector took the view that this particular sale effected in the year 1975 was bad in law and by the order dt. 15th April, 1995 set aside the same and directed that the said land be confiscated to the State. In that proceeding, notice had also been given to the petitioner and the petitioner was also heard.

4. Being aggrieved by that order, the petitioner herein (the original land owner) and the respondent no.3 herein (the purchaser) filed revision before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal, by its judgment and order dt. 18th November, 1996 set aside the order of the Collector placing reliance on the judgment of the Supreme Court reported in AIR 1992 SC 503 in which it is held that a partnership could also be agriculturist. It, therefore, allowed the revision filed by the respondent no.3 while rejecting the one filed by the petitioner. Being aggrieved by that order, this petition has been filed.

5. As stated above, Rule was issued on 18th March, 1997 and was made returnable on 1st April, 1997. All the learned advocates having made their submissions, the matter is being disposed of finally.

6. Mr.Lakhani, learned advocate appearing for the petitioner submitted that the original sale transaction was bad in law inasmuch as the respondent no.3 was not an agriculturist and if the said sale was interfered with, the petitioner would be the beneficiary and the land would come back to the petitioner after approaching the Government. He relied upon the observations made in Para

17 of the judgment by the Division Bench of this Court in the case of Govindsingh Ramsinghbhai Vaghela Vs. G. Subbarao, Asstt. Collector Dholka and Others, reported in 1970 G.L.R. 897, wherein the Division Bench has observed as follows:

" It is no doubt that the words used in sec.9 sub-sec (3) are only these, namely, " Any person...may be summarily evicted by the Collector" and the sub-section does not say in so many terms that having summarily evicted such person, the Collector may store possession of the land to the original owner but that is clearly implicit in the sub-section. The Collector is given the power to summarily evict a person when it is found that by reason of the transfer being void, he is unauthorizedly in occupation or wrongfully in possession of the land. And this power is obviously conferred upon the Collector to secure enforcement of the salutary and beneficent provisions of the Act. If transfer has been made contrary to the provisions of the Act, it must not have any effect at all and the status quo ante must be restored, for otherwise the object of the Act would be frustrated. Even after the transfer is declared void, the transferor may not take action to recover possession of the land, for then he would have to return the purchase price received by him which he may not want to do and in that event the land would continue to remain in possession of the transferee and the object of the legislation would be defeated. The Legislature, therefore, did not leave it to the transferor to adopt proceedings for recovering possession of the land but provided that the Collector may summarily evict the tranferee or any other person who is unauthorizedly in occupation or wrongfully in possession of it, so that possession could be restored to the transferor and the effect of the transfer obliterated. It could not have been intended by the Legislature that the Collector after evicting the unauthorized occupant should retain possession of the land with himself or it should be appropriated to the use of the State. If such had been the intention, there would have been clear and express words to that effect. There being no such provision, the Collector must obviously, after summarily evicting the unauthorized occupant, hand back possession to the person who is the owner of that land. The Collector cannot, in the absence of specific provision to that effect, retain possession as against the owner of the land. This ground is, therefore, without substance and must be rejected. "

He, therefore, submitted that the petitioner have every right to move this petition and the order requires to be interfered with.

7. Mr. Nanavati, learned advocate appearing for the respondent no.3 relied upon the judgment of the Supreme Court in the case of Narayan Vs. Hukumchand, reported in AIR 1992 SC 503, but apart from that he submitted that the present petition should not be entertained at the instance of the petitioner. From the judgment of the Collector, it is seen that the petitioner does not dispute execution of the particular document with the respondent no.3. He states that he remembers that such a document was executed for Rs.1,500/- during the days of his father. He does not challenge the authenticity of it, nor does he allege any fraud. The learned Single Judge of this Court (Coram: S.B.Majmudar,J. as he then was) in the case between Smt. Ratnaprabhabai Vs. M/s. Tulsidas V. Patel & Ors., reported in 1982(2) G.L.R. P.213, in terms, held that in a case like this, the State could feel aggrieved but

"it is difficult to appreciate how the petitioner -original vendor of the lands, felt aggrieved by the decision of the Mamlatdar who had refused to set aside petitioner's sale transaction in 1962 in favour of the purchaser.It appears that the petitioner having pocketed Rs. One lac years back in 1962 is trying to catch at a straw and is practically indulging in the policy of dog in the manger of seeing that the hanging sword of the present litigation lingers on so that at some future time respondents may come round and may give some added financial advantage to the petitioner by way of bargain, and if the present proceedings are kept pending, such oblique intention of the petitioner may get fructified. The court obviously cannot be a party to such a design. When the petitioner is not a legally aggrieved party, it is impossible to give her any relief in the present proceedings under Art. 227 of the Constitution".

8. In my understanding, facts of the case are almost similar. This document was executed in the year 1975. Suo motu revision by the State was initiated in the year 1991. If at all, the State is aggrieved by the order of the Revenue Tribunal, it will be for the State to challenge the same. It cannot be interfered with at the instance of the petitioner who himself is the party to the particular sale document. The decision in Govindsingh's case (supra) can not help the petitioner to over come this difficulty. For this reason alone, I do not think it proper to entertain this petition any

further. The same is dismissed. Rule is discharged, with no order as to costs. The order of status quo granted earlier stands vacated.

9. Rule of this matter is being discharged only for the aforesaid reason, and without entering into controversy as to whether the judgment and order of the Revenue Tribunal is otherwise sustainable on merits or not. However, so long as it is not set aside, it will be considered as having force of law. It will be for the State Government to take its own decision in the case, if it wants to challenge and if any such petition is filed, it will also be open for the respondent no.3 to oppose it on various grounds available including the one of delay.

10. On the request being made by Mr. Lakhani for extension of status quo, the same will stand extended for a period of four weeks from today.

-----